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INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

IMPLEMENTATION OF THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN AGAINST ORGANIZED TRANSNATIONAL CRIME: QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME, AND OTHER POSSIBLE INTERNATIONAL INSTRUMENTS

Report of the Secretary-General

Summary

The present report provides an overview of the continuing work of the Centre for International Crime Prevention regarding implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and draws on information provided by 17 States and the United Nations Development Programme. Developments on specific issues, such as extradition and mutual assistance in criminal matters, are also covered, as they are directly related to both the implementation of the Naples Political Declaration and Global Action Plan and the strengthening of international cooperation against organized transnational crime. The report also sets out future action to be taken by the Centre in response to the needs and requests of Member States to strengthen their efforts in preventing and controlling organized transnational crime. The report raises issues that warrant consideration by the Commission with a view to determining further work in this area.

*E/CN.15/1998/1.

INTRODUCTION

1. The General Assembly, in its resolution 52/85, on the follow-up to the Naples Political Declaration and Global Action Plan against Transnational Organized Crime, requested the Secretary-General to continue his work on the central repository established pursuant to Economic and Social Council resolution 1996/27 with a view to increasing, maintaining and updating the data and other information contained in the repository. In its resolution 1996/27, the Council requested the Secretary-General to continue collecting and analysing information on the structure, dynamics and other aspects of all forms of organized transnational crime and to report to the Commission on Crime Prevention and Criminal Justice on the implementation of the resolution.

2. A major step in the implementation of the Naples Political Declaration and Global Action Plan has been the establishment, in compliance with General Assembly resolution 52/85, of an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime. A first meeting of the group of experts was held at Warsaw from 2 to 6 February 1998 (E/CN.15/1998/5).

3. The present report summarizes the results of the work carried out by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in furthering the implementation of the Naples Political Declaration and Global Action Plan. It also draws on information provided by 17 States (Austria, Chile, Cook Islands, Cuba, Egypt, Guyana, Hungary, Kenya, Japan, Jordan, Mexico, Panama, Saudi Arabia, South Africa, Spain, Sweden and Tunisia) and by the United Nations Development Programme (UNDP). Developments on specific issues, such as extradition and mutual assistance in criminal matters,* are also considered in this report, as they are directly related to both the implementation of the Naples Political Declaration and Global Action Plan and the strengthening of international cooperation in action against organized transnational crime.

I. IMPLEMENTATION OF THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN

A. Action by Member States

4. The responses received to the request of the Secretary-General for information on action taken at the national level to prevent and control organized transnational crime fall into two broad categories. The first and larger category comprises information on the elaboration of specific national legislation to counter organized crime, as well as measures taken to restructure the criminal justice system with a view to reacting to the threat posed by this form of crime. The second includes national information on, and assessments of, operations carried out by organized criminal groups.

5. In connection with national legislation, a significant development was the introduction of a definition of organized crime, or the use of elements thereof, in the legislation of some responding States. Chile, Hungary, Kenya, Mexico and Sweden reported that they had adopted legislation, or terms of reference used by law enforcement agencies, which contained or referred to defining characteristics of criminal organizations. Such characteristics included structural and operational features found to be common to organized criminal groups, including the continuity of the criminal association, division of labour, hierarchical structure and links with other groups, as well as the use of violence, intimidation and corruption.

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*See the report of the expert group meeting on mutual assistance in criminal matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998 (E/CN.15/1998/7).

6. Other countries had not yet felt it necessary to embark upon the elaboration of legislation specifically dealing with organized crime but had established interministerial expert groups to study the issue. Saudi Arabia and Tunisia were being used mainly as transit countries and feared that, unless proper and timely attention was given to the problem, organized crime might take root in their national territory and become a threat to national security.

7. Substantive legislation elaborated by responding States for the purpose of curbing the operations of organized crime dealt with issues such as illicit drug and arms trafficking, trafficking in illegal migrants and in stolen vehicles, and money-laundering. Chile, Hungary, Spain and Tunisia indicated that terrorism was an issue also covered by their national legislation against organized crime, particularly with regard to possible links between terrorist groups and organized criminal groups.

8. Regarding law enforcement operations, some countries had adopted measures allowing investigation techniques aimed at weakening and penetrating criminal organizations. In particular, Chile, Mexico, Spain and Sweden reported that their national law enforcement agencies could use investigative tools that had proved effective in dismantling criminal groups, such as undercover agents to infiltrate criminal associations and controlled delivery to uncover as many criminals involved in illicit transactions as possible, as well as electronic and other surveillance methods. Measures to protect witnesses and former criminals who had decided to abandon organized criminal groups and cooperate with the authorities were also reported as effective means of obtaining information necessary for the successful prosecution of cases involving organized crime.

9. International cooperation, both bilateral and multilateral, was regarded by many responding States as the main avenue for successful action against criminal groups whose operations and interests were no longer restricted by national borders. Work on issues such as extradition and mutual assistance in criminal matters had been done within different frameworks, *inter alia*, on the basis of existing international conventions, regional schemes and agreements and bilateral cooperation treaties, and also in anticipation of prospective international instruments to combat organized crime.

10. Chile, Guyana, Hungary, Kenya, Japan, Mexico, Saudi Arabia, South Africa and Tunisia provided information on a number of legislative and other measures to combat organized crime that had been taken as a result of work done under the auspices of the United Nations. Spain and Sweden referred to similar initiatives they had taken as part of their cooperation within the region, particularly within the framework of the European Community. Thus, multilateral cooperation had a direct beneficial impact, as it provided Member States with the opportunity to share and exchange experiences and knowledge and to pool resources.

11. A disturbing feature emerging from the information provided on organized criminal operations related to trafficking in human beings. Hungary, Japan, Mexico, Sweden and Tunisia reported that organized criminal groups controlled the smuggling of illegal migrants and refugees into their territories or were using the territories as transit points. The measures taken by national authorities to prevent such waves of migration required the support of experienced international organizations.

B. Action by the Secretariat and other international organizations

12. An important achievement of the Centre for International Crime Prevention in the implementation of the Naples Political Declaration and Global Action Plan was the elaboration, pursuant to Economic and Social Council resolution 1996/27, of a training manual for law enforcement personnel responsible for investigating organized transnational crime. A draft of the manual is being finalized, taking into account the recommendations made by a meeting of a group of experts, held at Vienna from 8 to 10 December 1997.

13. The manual, which takes into account existing proposals and approaches of the United Nations and other international forums, deals with both general issues, such as the definition, nature, evolution and impact of organized crime or criminal activities related to organized crime, and more specific topics related to the work of law enforcement agencies, including ad hoc investigative techniques and methods, characteristics of the model specialist investigator and technical and scientific resources required for investigation. Best practices and methods of investigation of proven effectiveness are also taken into account.

14. Technical assistance has been provided by the Centre to several States, at their request, in order to strengthen their criminal justice systems, particularly those sectors most affected by the phenomenon of organized crime (E/CN.15/1998/9). The Centre has developed a number of project proposals, which have been submitted to potential donors for funding (E/CN.15/1998/CRP.6).

15. Training activities were also the focus of a large project being implemented by the Centre in Kyrgyzstan in cooperation with UNDP and the Danish International Development Agency. The project activities, which are aimed at enhancing the capacity of the Ministry of Internal Affairs to combat organized crime, include the provision of technical equipment, advisory services and the elaboration of a training manual.*

16. Following the Regional Ministerial Workshop held at Buenos Aires from 27 to 30 November 1995, the Centre organized two regional ministerial workshops on the follow-up to the Naples Political Declaration and Global Action Plan, for Africa and for Asia and the Pacific. Reports on the two more recent workshops will be submitted to the Commission at its seventh session (E/CN.15/1998/6/Add.1 and 2).

17. The Centre organized, in cooperation with the International Institute of Higher Studies in Criminal Sciences, the first of a series of training seminars for professionals involved in day-to-day policy-oriented and operational work on extradition. The aim of the seminar was to identify problems relating to cooperation in criminal matters and to devise effective strategies for improving understanding of extradition mechanisms and procedures. The seminar, which was conducted in English and held at Siracusa, Italy, in November 1997, was attended by officials from 42 countries in all regions. The Institute has indicated its intention to host three more seminars in 1998: one in English, one in French and one in Spanish. The Government of Spain has expressed a keen interest in hosting or substantially contributing to the seminar to be held in Spanish.

18. Participants in the first seminar stressed that extradition should be at the forefront of national and international policies for combating transnational crime. In fact, the cross-border nature of organized crime demanded a collective rethinking of the modalities of international cooperation with a view to fostering mutual legal assistance. Many participants also emphasized that training activities should be complemented by advisory services and assistance in developing and amending extradition legislation. In evaluating the seminar, participants welcomed both the initiative taken in organizing it and the format selected for its conduct and expressed their gratitude to the Institute for making the seminar possible. It was unanimously agreed that such activities were long overdue, that they should be repeated in the future as often as possible and that their scope should be expanded to include other modalities of international cooperation in criminal matters. Donor countries were called upon to actively support the organization of future seminars, which could potentially yield valuable practical results in return for a relatively modest investment.

19. Drawing on the experience gained through the training seminars on extradition, the Centre is exploring the possibility of elaborating a training manual on that subject. The manual will build on the modified model treaty, pursuant to General Assembly resolution 52/88, and on the material collected or produced for the training

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*For the two training seminars for senior law enforcement and criminal justice officers of the former Yugoslav Republic of Macedonia, see the report of the Secretary-General on technical cooperation (E/CN.15/1998/9).

seminars, and will follow the format used in the seminars, incorporating the analysis of various case studies to better illustrate the problems encountered in practice and potential solutions. The elaboration of the manual has been welcomed by Governments and intergovernmental organizations, which have pledged their support.

20. The Centre has also embarked on the development of model legislation on extradition, on the basis of the model treaty and taking into account the recommendations of the expert group meeting on extradition (E/CN.15/1997/6 and Corr.1). Following the training seminar mentioned in paragraph 17 above, the International Institute of Higher Studies in Criminal Sciences hosted at Siracusa a small informal group of experts that carried out a preliminary review of the draft model legislation. The Centre is continuing its work on the basis of the results of the preliminary review. Extrabudgetary resources will be required to convene a group of experts for the purpose of finalizing the text.

21. In addition to the activities on extradition, the Centre continued work on the establishment of the central repository on organized crime, pursuant to Economic and Social Council resolution 1996/27. The existing material is being systematized in accordance with the guidelines set out in annex II, entitled "Methodological points and categorization", contained in Council resolution 1997/22, and work on the development of software is nearing completion. The full cooperation of all Governments is crucial to developing and maintaining the repository in such a way as to make it as useful as possible. The data and other information that have been received to date from Member States have not been in conformity with the guidelines set out in annex II in Council resolution 1997/22.

22. UNDP indicated that it was implementing several country programmes in different regions and actively supported activities in the United Nations system on this issue, particularly the activities of the Centre.

II. PROPOSALS FOR CONSIDERATION BY THE COMMISSION

23. The process of operationalizing the activities of the Centre for International Crime Prevention in the field of action against organized transnational crime, which began with the elaboration of the training manual and the provision of technical assistance to some Member States, has already produced useful results. For example, needs-assessment and advisory and evaluation missions carried out in connection with technical cooperation activities have demonstrated that many countries, particularly developing countries and countries with economies in transition, require up-to-date legislative frameworks to keep pace with new criminal phenomena. More often than not, the need for legislation is accompanied by a need to restructure the criminal justice system.

24. In order to facilitate the work of the Centre in developing and monitoring the central repository, the Commission may wish to encourage States to actively cooperate with the Centre by providing and updating information and legislative material. Furthermore, the Commission may wish to explore ways of supplementing the material provided by States in order to render the central repository more comprehensive and useful.

25. The Centre intends to elaborate model legislation and provide assistance to requesting Member States in the formulation of criminal justice policies aimed at preventing and controlling organized transnational crime. The Centre will also continue its work in the areas of extradition, mutual assistance in criminal matters and other modalities of international cooperation. To obtain the best possible results, it will be necessary to carry out applied research on legal and policy issues, criminal justice administration and other relevant disciplines, taking into account differences in judicial systems and cultures. Special attention will need to be paid to strengthening internal expertise through training. The Commission may wish to discuss and select issues to be taken into account in this course of action and to identify mechanisms for its implementation, such as the convening of expert group meetings and the organization of the work of governmental and independent experts, or any other modalities Member States may consider appropriate. A key issue that needs to be dealt with effectively is the availability of adequate resources for the development and maintenance of the requisite expertise and the provision of technical assistance.